

D.A. 2-4-93

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IN THE SUPREME COURT OF FLORIDA

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

TERRY LITE,
Petitioner,
vs.
STATE OF FLORIDA,
Respondent.

Case No. 79,636

PETITIONER'S REPLY BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Petitioner was the defendant in the Criminal Division of the Circuit Court of the Seventeenth Judicial Circuit, In and For Broward County, Florida, and the appellee in the Fourth District Court of Appeal. Respondent was the prosecution and the appellant below.

In the brief, the parties will be referred to as they appear before this Honorable Court.

The following symbol will be used:

R = Record on Appeal

ARGUMENT

THE FOURTH DISTRICT COURT OF APPEAL WAS
INCORRECT WHEN IT HELD SECTION 322.055(1),
FLORIDA STATUTES (SUPP. 1990) CONSTITUTIONAL.

In its brief, Respondent argues that Florida Statute 322.055(1) (Supp. 1990) is designed to deter individuals from becoming involved with **drugs** for fear of not receiving or losing the privilege to drive. Respondent's Brief on the Merits at 5. The same argument, however, can **be** made for numerous other criminal offenses committed without **the use of a motor vehicle**. Respondent also argues that the statute is a reasonable effort to curtail the transportation of illegal drugs throughout the state. Respondent's **Brief** on the Merits at 5. However, Florida Statute 322.055(1) (Supp. 1990), does not require that one transport narcotics in a motor vehicle before or during the alleged offense. It is very unlikely that the importation of illegal drugs into Florida by boat **or** plane would be deterred by the loss of a driver's license.

Respondent next argues that the statute is an attempt by the legislature to prevent those most likely to abuse drugs to unlawfully take to the roads. Respondent's Brief on the Merits at 5-6. This argument is a weak grasp at a possible relationship between illegal drugs and highway safety because one need not be **a** user nor transport illegal drugs in order to lose one's driver's license under this statute. Thus, this is an unreasonable method of trying to achieve a legitimate state interest. "Keeping off the roads drivers who have committed offenses not involving vehicles is not a reasonable means of ensuring that the roads are free of

drivers who operate vehicles unsafely or illegally." People v. Lindner, 535 N.E.2d 829, 833 (Ill. 1989).

Respondent's reliance on Smith v. State, 276 A.2d 369 (N.J. 1971) is distinguishable. In Smith, as statutorily defined, a "disorderly person" is one who uses or is under the influence of a narcotic drug. Thus, evidence that one is a user and possible an abuser of narcotics creates an indirect relationship with a state's interest in protecting the highways from individuals likely to be under the influence. In Smith, there is a statutory element of use which is non-existent in Florida Statute 322.055(1).

The variety of Florida statutes cited within Respondent's Brief on the Merits at 8 all require a direct or at least an indirect relationship between motor vehicle and act whereas Florida Statute 322.055(1) (Supp. 1990) does not. The Financial Responsibility Law, Florida Statute 324.051 and 324.121 (1991) suspends the driver's license of an owner's car who does not have liability insurance. Florida Statute 322.26(5) (1991) permits suspension of a driver's license when an individual commits perjury related to the ownership of a motor vehicle. Florida Statute 318.15 and 322.245 (1991) provide for suspension for failure to comply with a traffic court's directives and authorizes civil penalties. Florida Statute 322.274(1) (1991) proscribes suspension for the theft of parts or components of a motor vehicle. Each of the above statutes do relate to a motor vehicle which is precisely why they are not in violation of due process and which is precisely why Florida Statute 322.055(1) is in violation of due process.

Petitioner relies on his Initial Brief on the Merits for further argument.

CONCLUSION

Based on the foregoing arguments and the authorities cited therein, Petitioner respectfully requests this Court to quash the **opinion** of the Fourth District Court of Appeal and reverse this **Cause by declaring Section 322.055 (1) (Supp. 1990)** unconstitutional.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished by courier to James J. Carney, Assistant Attorney General, Elisha Newton Dimick Building, Room 240, 111 Georgia Avenue, West Palm Beach, Florida 33401 this _____ day of November, 1992.



Counsel for Petitioner _____